

FIG 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Carl D. Contadini	Atty. Docket No.:	24044-205B
Serial No.: 10/686,312	Group Art Unit:	2858
Filing Date:	October 15, 2003	
Title:	Device with One or More Indicators	

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF ARTHUR G. SCHAIER IN SUPPORT OF  
PETITION UNDER 37 CFR 1.181**

I, Arthur G. Schaier, hereby declare that:

1. I am a partner and head of the Intellectual Property ("IP") Department in the law firm of Carmody & Torrance LLP, and have been so since 1998.
2. This Declaration is in support of Applicant's Petition to (i) accept the late filing of the Response to Notice to File Missing Parts of Application, dated January 13, 2004, and waive all extension fees associated therewith, and (ii) enter Fig. 3, a copy of which is attached to the accompanying Response To Notice To File Missing Parts Of Application And Fee Authorization, in the above-entitled application and consider it as having a filing date of October 15, 2003, in view of the evidence being submitted herewith to establish that this Fig. 3 was in fact filed along with the other application papers on October 15, 2003.

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3. I have reviewed the Declarations of Linda M. Freed and Florence S. Chamoures, and believe them to be both factually accurate as well as an accurate account of the incoming and outgoing mail procedures I have put in place.

4. I can also attest to the fact that the mailroom staff is well aware of the importance of timely and accurate sorting and delivery of mail to the IP Department, including and especially mail originating from the U.S.P.T.O. Accordingly, I have no reason to believe that there has been the receipt of, but nonrouting or misrouting of, any mail originating from the U.S.P.T.O. on or about January 13<sup>th</sup>.

5. The second issue addressed by this Declaration is to support Applicant's Petition to have the Commissioner accept Fig. 3 as having been filed with the original application papers.

6. I too have reviewed the application file folder, including the center portion of the Kruysman file folder and the left hand side thereof. The fact that Fig. 3 is present in both locations, in combination with the Declaration of Ms. Chamoures, along with the documentary evidence submitted herewith, leads me to believe and respectfully submit that original Fig. 3 was filed on October 15<sup>th</sup> along with the remaining application papers.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false

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statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Arthur G. Schaier", followed by the date "7/21/04". The signature is written over a horizontal line.

Arthur G. Schaier  
Carmody & Torrance LLP  
50 Leavenworth Street  
P.O. Box 1110  
Waterbury, CT 06721-1110  
(203) 578-4267

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Carl D. Contadini	Atty. Docket No.:	24044-205B
Serial No.: 10/686,312	Group Art Unit:	2858
Filing Date:	October 15, 2003	
Title:	Device with One or More Indicators	

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF LINDA M. FREED IN SUPPORT OF  
PETITION UNDER 37 CFR 1.181**

I, Linda M. Freed, hereby declare that:

1. I am currently employed by the law firm of Carmody & Torrance LLP, and have been employed by the law firm of Carmody & Torrance LLP as a Paralegal in the Intellectual Property Department (the "IP Department") since September 1999.
2. I am responsible for the opening, date stamping, logging in, and docketing of all incoming mail addressed to the IP Department and its attorneys on a daily basis, including, but not limited to, mail sent by the U.S. Patent and Trademark Office.
3. This Declaration is in support of Applicant's Petition to (i) accept the late filing of the Response to Notice to File Missing Parts of Application, dated January 13, 2004, and waive all extension fees associated therewith, and (ii) enter Fig. 3, a copy of which is attached to the accompanying Response To Notice To File Missing Parts Of Application

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And Fee Authorization hereto, in the above-entitled application and consider it as having a filing date of October 15, 2003, in view of the evidence being submitted herewith to establish that this Fig. 3 was in fact filed along with the other application papers on October 15, 2003.

4. On July 14, 2004, I telephoned the Office of Initial Patent Examination, Customer Service (703-308-1202) (the "OIPE") to inquire about the status of the issuance of a Filing Receipt and anticipated Notice to File Missing Parts in connection with the above-referenced application, as we did not receive them on a timely basis.

5. I was then informed that a Filing Receipt and Notice to File Missing Parts, a copy of which is attached to the accompanying Response to Notice To File Missing Parts of Application and Fee Authorization, was allegedly mailed out on January 13, 2004.

6. Immediately thereafter and still on July 14, 2004, I reviewed the 2004 Incoming Mail Log (the "Mail Log") for the time period on and around January 13, 2004, and respectfully submit that had said Filing Receipt and Notice to File Missing Parts been received, it would have been entered into the Mail Log. I thus respectfully submit that the Filing Receipt and Notice to File Missing Parts were not received.

7. Under a procedure set up and maintained for the IP Department by myself and Arthur Schaier, a partner in the Intellectual Property Group, all incoming mail is identified by the mailroom staff and delivered to *my* office, regardless of the attorney to whom the particular correspondence may be addressed. The mail is then opened by me, date stamped, logged in as having been received, and then docketed if further action is needed. Excerpts from the Mail Log, and specifically, for the period January 16<sup>th</sup> through January 30<sup>th</sup>, is attached hereto as Exhibit A.

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8. Exhibit A shows, among other things, the date each piece of incoming mail was received in the IP Department, who entered it (either myself or Florence Chamoures, as discussed further below), the responsible attorney, where the mail originated, the mailing date of the correspondence, and the description of the item(s).

9. Exhibit A shows, among other things, that *other* U.S.P.T.O. mail, dated on January 13, 2004, was in fact received during the time period provided (e.g. a Notice of Allowance was received on January 15<sup>th</sup>, a Notice of Allowance in another file was received on January 16<sup>th</sup>, and a Notice of Publication was received in yet another file on January 16<sup>th</sup>).

10. Exhibit A also evidences that I was in the office January 14<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup>- 23<sup>rd</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> and attended to the foregoing responsibilities.

11. On days that I am absent, the IP Department's secretary, Florence S. Chamoures, opens, date stamps and logs the incoming mail. As set forth in the accompanying Declaration of Ms. Chamoures, Ms. Chamoures was responsible for the opening, date stamping and logging in of all incoming mail on January 16<sup>th</sup>. Based on my review of the entries on January 16<sup>th</sup>, as well as those during the period from January 14<sup>th</sup> – 30<sup>th</sup>, it is my belief that had the foregoing Filing Receipt and Notice to File Missing Parts been received in a reasonable timely manner, it would have been entered into the Mail Log.

12. Related to the foregoing, it is part of my responsibilities to follow-up, as I did in the instant case, when there is a substantial delay from when I would expect the mailing of a particular communication from the Patent Office. Based on recent discussions with representatives at the Patent Office, it is my understanding that for at least the last six

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months, the OIPE had delays in issuing filing receipts, and on July 14, 2004 I was also informed that from April 2003 through January 2004 applications were “skipped” and filing receipts were not issued. I have on several occasions since as early as January 2004 called the OIPE to inquire on the status of several filing receipts and was informed of long delays. It is with this understanding of the delays that I did not pursue earlier the status of the issuance of a Filing Receipt for this application.

13. The second issue addressed by this Declaration is to support Applicant’s Petition to have the Commissioner accept Fig. 3 as having been filed with the original application papers.

14. My responsibility, after a new U.S. patent application has been filed by the Express Mail method, is to docket the application filing particulars in our computer database. In the normal course of business, which I have no reason to believe was departed from in the current case, the application file, upon being placed in my office after the filing and copying of the application had been attended to, already has a copy of the filed application in the center portion of the Kruysman file folder, with a copy of the drawings, as filed, on the left hand side. I have reviewed the current application file and respectfully submit that a copy of Fig. 3, along with the other application filing papers, is both in the center portion of the file folder where I would expect it, *and* on the left hand side with the other figures. Knowing that in the normal course, the original application papers are those that are filed with copies being placed in the file folder, I respectfully submit that original Fig. 3 was filed on October 15<sup>th</sup> along with the remaining application papers.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further



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that these statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Linda M. Freed

Linda M. Freed

Date: July 21, 2004

# 2004 INCOMING MAIL LOG

DATE REC'D	REC'D BY	RESP ATTY	DOCKET NO.	COUNTRY	MAILED BY	DATE MAILED	DESCRIPTION OF ITEM
1/14	Bmf	oag	A0755	US	PTO		PC
1/14	Bmf	oag	A0756	US	PTO		PC
1/14	Bmf	gla	2156-127A	US	PTO		PC
1/14	Bmf	gla	2156-154B	US	PTO	1/12	OA
1/14	Bmf	gla	2156-Tool6	US	PTO	1/9	NOT receipt of SDU
1/15	Bmf	oag	25148-12A	US	PTO		PC
1/15	Bmf	oag	A0562	US	PTO		PC
1/15	Bmf	oag	A0724	US	PTO	1/13	NOA
1/15	Bmf	oag	25148-09A	US	PTO		patent
1/16	Jrc	JLC	2156-441	US	Hawkins/Parnell	1/8	Corres -
		AGS	A0731	US	PTO	1/14	NOA
		oag	PI 1498	Canada	Cowlings	12/1/03	Corres Re: Canada Appl.
		oag	opp NO 91152097	US	PTO	1/8/04	Corres Re: Puretech/Nestle

(W1064249)

NOA Notice of Allowance  
NOP Notice of Publication  
OA Office Action

FR Filing Receipt  
PC Postcard  
NOT Notice/Notification

POA  
FA  
IN

Power of Attorney  
Foreign agent  
Issue Notification

PTO U.S. Patent & Trademark Office

# 2004 INCOMING MAIL LOG

DATE REC'D	REC'D BY	RESP ATTY	DOCKET NO.	COUNTRY	MAILED BY	DATE MAILED	DESCRIPTION OF ITEM
1/16/04	JLC	agv	24044-7020A	US	PTD	1/13/04	NOA
			24044-11	"	"	1/9/04	Cert. of Registration
			24044-7018A	Australia	FA	12/22/03	Corres
		JLC	2156-7130B	US	PTD	1/9/04	Notice of Acceptance
		JLC	2156-7306A	"	"	1/08/04	"
		JLC	2156-7320	"	"	1/8/04	"
		JLC	2156-094A	"	"	1/13/04	NOP
		JLC	2156-035	CANADA	Gowlings	1/6/04	Conse E: CHMID12E

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# 2004 INCOMING MAIL LOG

DATE REC'D	REC'D BY	RESP ATTY	DOCKET NO.	COUNTRY	MAILED BY	DATE MAILED	DESCRIPTION OF ITEM
1/19	Inf	agg	25928-07A	US	PTO		PC
1/19	Inf	agg	2156-302A	US	PTO		PC
1/19	Inf	agg	25928-09A	US	PTO		PC
1/19	Inf	agg	A0725	US	PTO	1/14	NOA
1/20	Inf	agg	25928-08A	US	PTO		PC
1/20	Inf	agg	2156-056C	US	PTO		PC
1/20	Inf	agg	2156-400A	US	PTO		PC
1/20	Inf	agg	2156-056D	US	PTO		PC
1/20	Inf	agg	25928-01A	US	PTO	1/16	NOA
1/20	Inf	agg	A0726	US	PTO	1/15	Recorded Assignment
1/20	Inf	agg	25928-02A	US	PTO	1/15	FR & MP
1/20	Inf	agg	25928-01A	US	PTO	1/15	FR & MP
1/20	Inf	agg	24044-205A	US	PTO	1/16	FR & MP

(W1064249)

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# 2004 INCOMING MAIL LOG

DATE REC'D	REC'D BY	RESP ATTY	DOCKET NO.	COUNTRY	MAILED BY	DATE MAILED	DESCRIPTION OF ITEM
1/21	Inf	agg	24900-22	US	PTD		PC
1/21	Inf	agg	2156-T30B And	BR	FA	1/14	Registration Certif
1/22	Inf	agg	26445-1	US	PTD		PC
1/22	Inf	agg	A0732	US	PTD	1/20	NOA
1/22	Inf	agg	24900-16	US	PTD		patent
1/22	Inf	agg	2156-088A	PCT	PTD	1/16	Forms PCT/1PEA/416-409 (IPEA)
1/23 1/26	Inf	agg	2156-109B	US	PTD	1/21	NOA
1/23	Inf	agg	24900-19	US	PTD		PC
1/26	Inf	agg	2156-T600	US	PTD		PC
1/26	Inf	agg	25614-04A	US	PTD		PC
1/26	Inf	agg	24262-01C	US	PTD		NOA
1/26	Inf	agg	25653-T001	US	PTD	1/22	OA
1/26	Inf	agg	2156-400A	US	PTD	1/22	FR missing Parts

(W1064249)

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DATE REC'D	REC'D BY	RESP ATTY	DOCKET NO.	COUNTRY	MAILED BY	DATE MAILED	DESCRIPTION OF ITEM
1/26	Inf	agg	25985-01A	PCT	PTD	1/22	PCT/RO/106; PCT/ISA/202 PCT/RO/102; PCT/RO/105
1/26	Inf	agg	2156-062 <del>2156-0674</del>	Europe	FA	1/23	Search Report
1/27	Inf	agg	24262-01C	US	PTD	1/21	OA
1/27	Inf	agg	2156-094A 24044-	PCT	WPD	1/15	PCT/IB/308 & Int'l pub.
1/27	Inf	agg	P0222A	PCT	PTD	1/22	PCT/IEA/416 IPER
1/29	Inf	agg	26072-01B	US	PTD		PC
1/29	Inf	agg	A0724	GB	FA	1/22	Registration Certif.
1/29	Inf	agg	2156-T116	JP	FA	1/15	Renewal certificate
1/29	Inf	agg	2156-T115A	GB	FA	1/23	Renewal certificate
1/30	Inf	agg	26145-T003	US	PTD		PC
1/30	Inf	agg	2156-124B	US	PTD	1/27	OA
1/30	Inf	agg	2156-087A	US	PTD	1/27	OA
1/30	Inf	agg	25895-01B	US	PTD	1/28	OA

(W1064249)

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Carl D. Contadini	Atty. Docket No.:	24044-205B
Serial No.: 10/686,312	Group Art Unit:	2858
Filing Date:	October 15, 2003	
Title:	Device with One or More Indicators	

Mail Stop Petition  
Commissioner for Patents  
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Alexandria, VA 22313-1450

**DECLARATION OF FLORENCE S. CHAMOURES IN SUPPORT OF  
PETITION UNDER 37 CFR 1.181**

I, Florence S. Chamoures, hereby declare that:

1. I am, and have been, employed by the law firm of Carmody & Torrance LLP as a Secretary in the Intellectual Property Department (the "IP Department") since November 1999.

2. This Declaration is in support of Applicant's Petition to (i) accept the late filing of the Response to Notice to File Missing Parts of Application, dated January 13, 2004, and waive all extension fees associated therewith, and (ii) enter Fig. 3, a copy of which is attached to the accompanying Response To Notice To File Missing Parts Of Application And Fee Authorization, in the above-entitled application and consider it as having a filing date of October 15, 2003, in view of the evidence being submitted herewith to establish that this Fig. 3 was in fact filed along with the other application papers on October 15, 2003.

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3. In the absence of Linda M. Freed from the office, such as on January 16, 2004, it is my responsibility to open, date stamp, and log in all incoming mail addressed to the IP Department and its attorneys, including, but not limited to, mail sent by the U.S. Patent and Trademark Office.

4. Once logged in, I then leave the mail in Ms. Freed's office so that upon her return, the mail can be docketed, if needed, for further processing.

5. I am familiar with and have reviewed Exhibit A to the Declaration of Ms. Freed, and in particular, the 2004 Incoming Mail Log (the "Mail Log") for the time period on and around January 13, 2004, and confirm that all the entries entered by me (namely the last three (3) on page 1 and all eight (8) entries on page 2) were entered on January 16<sup>th</sup>. I respectfully submit that had a Filing Receipt and Notice to File Missing Parts for the above-entitled application been received on January 16<sup>th</sup>, it would have been entered into the Mail Log by me. I thus respectfully submit that a Filing Receipt and Notice to File Missing Parts for the instant application were not received on January 16<sup>th</sup>.

6. The second issue addressed by this Declaration is to support Applicant's Petition to have the Commissioner accept Fig. 3 as having been filed with the original application papers.

7. My responsibilities, after obtaining the authorization to file from, and signature of, the responsible attorney on all transmittal pages, are to sign the Express Mail stamp and then make the necessary copies of the application papers, comparing all pages with that



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Atty. Docket No.: 24044-205B

on the postcard and the application Transmittal page. The original set of application papers are those that are filed with the U.S.P.T.O. In the normal course, one copy of the application as filed is then placed in the center portion of the Kruysman file folder, with a copy of the drawings, as filed, on the left hand side. The application is then placed in the care of Linda Freed, the IP Department's Paralegal, for docketing and further processing.

8. I have reviewed the current application file and respectfully submit that a copy of Fig. 3, along with the other application papers as filed, is both in the center portion of the file folder where I would expect it, and on the left hand side with the other figures. Knowing that in the normal course, the original application papers are those that are filed with copies being placed in the file folder, I respectfully submit that original Fig. 3 was filed on October 15<sup>th</sup> along with the remaining application papers.

9. In particular, as part of my responsibility and in my normal course, I carefully check all application papers prior to their being placed in the Express Mail pouch, and compare the contents of the application papers with the items checked on the accompanying Utility Patent Application Transmittal as well as the postcard (both of which are attached hereto as Exhibit A). As indicated therein, both the Transmittal and the postcard indicate the inclusion of "Drawings (3 figures; 2 sheets)." I respectfully submit that to the best of my knowledge, all the procedures our IP Department has in place, including those set forth above, were followed on January 13<sup>th</sup> in connection with the filing of the instant application. Accordingly, I respectfully submit that Fig. 3 was filed with the original application papers on October 15, 2003.

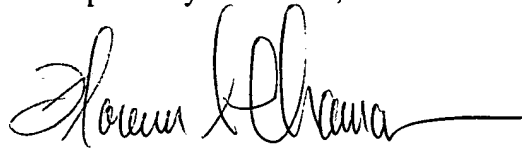
I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements and the like so made are punishable by fine or imprisonment, or

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that these statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Florence S. Chamoures', written over a horizontal line.

Florence S. Chamoures

Date: July <sup>21</sup>\_\_, 2004

Mail Stop Patent Application  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attorney Docket No. 24044-205B

### UTILITY PATENT APPLICATION TRANSMITTAL

Enclosed for filing is the patent application of Inventor:

CARL D. CONTADINI

TITLE: DEVICE WITH ONE OR MORE INDICATORS

**ENCLOSED ARE:**

- [X] Application: (Specification, 8 sheets; Claims, 3 sheets; & Abstract, 1 sheet)
- [X] Drawings (3 figures; 2 sheets)
- [X] Declaration and Power of Attorney: (2 sheets)
- [X] Nonpublication Request Under 35 USC 122(b)(2)(B)(i)

### FEE COMPUTATION

CLAIMS AS FILED				
FOR	NUMBER FILED	NUMBER EXTRA	RATE	BASIC FEE \$385
Total Claims	17 - 20 =		X \$ 9 =	
Indep. Claims	2 - 3 =		X \$43 =	
TOTAL FILING FEE				\$385

Please charge Deposit Account No. 50-0447 in the amount of the total filing fee indicated above, plus any deficiencies. A duplicate copy of this transmittal is attached.

☒ Applicant(s) claims small entity status if box is checked.

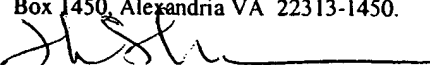
The Commissioner is hereby authorized to charge the following additional fees by this paper and during the entire pendency of this application to Deposit Account No. 50-0447:

- 37 CFR 1.16(a), (f) or (g) (filing fees);
- 37 CFR 1.16(b), (c) and (d) (presentation of extra claims);
- 37 CFR 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application); and
- 37 CFR 1.17 (application processing fee).


As indicated in the enclosed Declaration, please send all future correspondence to Arthur G. Schaier, Carmody & Torrance LLP, P.O. Box 1110, 50 Leavenworth Street, Waterbury, CT 06721-1110.

### CERTIFICATION UNDER 37 CFR 1.10

I hereby certify that this Utility Patent Application Transmittal and the documents referred to as attached therein are being deposited with the U.S. Postal Service on this October 15, 2003 in an envelope as "Express Mail Post Office to Addressee," Mailing Label No. ER378295717US addressed to Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

  
Florence S. Chamouris

Respectfully submitted,

By:   
Arthur G. Schaier, Reg. No. 37,715  
Carmody & Torrance LLP  
50 Leavenworth Street  
P.O. Box 1110  
Waterbury, CT 06721-1110  
(203) 575-2629

(Please date stamp this postcard and return to Carmody & Torrance)

**TITLE:** Device With One or More Indicators  
**DOCKET NO.:** 24044-205B  
**INVENTOR:** Carl D. Contadini  
**SERIAL NO.:** to be assigned  
**FILING DATE:** concurrently herewith

22264 U.S. PTO  
10/686312



Enclosed are the following items sent via Express Mail, Mailing Label No. ER378295717US, on October 15, 2003 to Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, regarding the above application:

1. Return receipt post card, self-addressed, prepaid
2. Transmittal (2 copies)
3. Application: (Specification, 8 sheets; Claims, 1 sheet; & Abstract, 1 sheet)
4. Drawings (3 figures; 2 sheets)
5. Declaration and Power of Attorney: (2 sheets)
6. Nonpublication Request Under 35 USC 122(b)(2)(B)(i)

**Carmody & Torrance LLP**  
**RECEIVED**

OCT 21 2003

**DATE OF DEPOSIT:** October 15, 2003

**Intellectual Property Dept.**